

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JAMES SMITH,

Plaintiff,

v.

PENNSYLVANIA DEPARTMENT
OF CORRECTIONS, *et al.*,

Defendants.

No. 4:18-CV-01134

(Judge Brann)

ORDER

MARCH 16, 2020

In accordance with the accompanying Memorandum Opinion, **IT IS
HEREBY ORDERED** that:

1. Defendants' motion to dismiss, ECF No. 38, is **GRANTED IN PART**;
2. Defendants Delbaso, Mason, Cronauer, Kellner, Gladfelter, McGee, Hinman, Varner, MacKnight, and Moore are **DISMISSED WITH PREJUDICE** from the Americans with Disabilities Act claim;
3. Defendants Delbaso, Mason, Cronauer, Kellner, Gladfelter, McGee, Hinman, Varner, MacKnight, and Moore are **DISMISSED WITHOUT PREJUDICE** from the conspiracy claim brought pursuant to 42 U.S.C. § 1985(3);
4. Defendant Pennsylvania Department of Corrections is **DISMISSED WITH PREJUDICE** from the civil rights claims brought pursuant to 42 U.S.C. § 1983;
5. Defendants Delbaso, Mason, Cronauer, Kellner, Gladfelter, Hinman, Varner, MacKnight, and Moore are **DISMISSED WITHOUT PREJUDICE** from the civil rights claims brought pursuant to 42 U.S.C. § 1983;

6. Defendant McGee is **DISMISSED WITHOUT PREJUDICE** as to the procedural due process and retaliation claims brought pursuant to 42 U.S.C. § 1983;
7. Plaintiff's request to proceed as representative of a putative class action pursuant to Federal Rule of Civil Procedure 23 is **DISMISSED WITHOUT PREJUDICE**; and
8. Plaintiff's claims for compensatory damages pursuant to the Americans with Disabilities Act and 42 U.S.C. § 1983 are **DISMISSED WITHOUT PREJUDICE**.
9. Plaintiff shall within thirty (30) days from the date of this Order file an amended complaint that addresses the deficiencies identified in the Court's Memorandum Opinion. Failure to comply will be deemed abandonment of this action, and Plaintiff's action will be subject to dismissal with prejudice without further warning.

BY THE COURT:

s/ Matthew W. Brann

Matthew W. Brann

United States District Judge